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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Written statement* submitted by the BADIL Resource Center for Palestinian Residency and Refugee Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2018]

* Issued as received, in the language(s) of submission only.

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The Israeli Nation-State Law: Underpinning Seven Decades of Institutionalized Discrimination

1. On 19 July 2018, the Israeli Knesset passed the Nation-State Law, cementing seven decades of institutionalized discrimination over the Palestinian people in Israel, the occupied Palestinian territory and exile. The Law states that "the exercise of the right to national self-determination" in Israel is "unique to the Jewish people", unequivocally denying that inalienable right to the Palestinian people. Further, the Law states Israel will be "open for Jewish immigration, and for the Ingathering (sic) of the Exiles", reiterating Israel's continued systematic denial of the right of return of 8.1 million Palestinian refugees and internally displaced persons (IDPs).

2. The Law holds "Jewish settlement as a national value" and mandates that the State "shall act to encourage and promote its establishment and strengthening", perpetuating Israel's domination over occupied people and territory. The utilization of this ambiguous terminology serves to extend Israel's jurisdiction into the oPt and facilitate its transformation from de facto to de jure annexation.[1]

3. Its passing constitutionally embeds these long-held and implemented policies of Israel, validates a plethora of pre-existing discriminatory laws designed to achieve and perpetuate the superiority of one racial group, and reinforces the subjugation and domination of the Palestinian people.

4. The Nation-State Law explicitly reserves the right to self-determination for Jews only; a state of affairs that began in practice with the 1917 Balfour Declaration, the 1922 Mandate for Palestine, the 1947 Partition Plan and culminated in a host of quasi-constitutional laws that ensure rights based on ethno-religious identity. It completely omits any pretence of democracy, which in reality never existed but was utilized to mask institutionalized discrimination. Knesset member and Bill sponsor, Avi Dichter, stated that, "We are enshrining this important bill into a law today to prevent even the slightest thought, let alone attempt, to transform Israel to a country of all its citizen (sic)."[2]

5. The segregation and isolation of the Palestinian people, serves to conceal the reality of the Israeli apartheid system,[3] and suppress the Palestinian people under the development of a geo-political legal hierarchy maintained through a two-tier legal system that systematically denies Palestinians their inalienable and fundamental rights by establishing and maintaining legal and spatial domination of one racial group over another.

6. All Palestinians are suppressed and dominated through domestic legislation and military orders that grant rights to the Jewish-Israeli population (including those in colonies in the West Bank) while denying Palestinians those same rights. Some of these laws include, inter alia: the Law of Return (1950), the Absentee Property Law (1950), the Citizenship (Nationality) Law (1952), Prevention of Infiltration Law (1954) and the Entrenchment of the Negation of the Right to Return Law (2001).[4]

7. Many of these laws were extended to the oPt in the form of military orders such as Military Order 1650 on infiltration, Military Order 418 on zoning and planning, the denial of residency, restrictions on family unification

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[1] BADIL, *Extension of Israeli Sovereignty in oPt Amounts to Annexation: Written Statement of the UN Human Rights Council*, 8 Feb 2018, A/HRC/37/NGO/101.

[2] Reuters and Moran Azulay, *Israel passes nationality bill into law*, Ynet News, 19 July 2019, available at https://www.ynetnews.com/articles/0,7340,L-5312792,00.html.

[3] See the withdrawn report issued by UN Economic and Social Commission for Western Asia; Richard Falk and Virginia Tilley, *Israeli practices towards the Palestinian People and the Question of Apartheid*, E/ESCWA/ECRI/2017/1, 15 March 2017, p. 37, available at https://www.middleeastmonitor.com/wp-content/uploads/downloads/201703_UN_ESCWA-israeli-practices-palestinian-people-apartheid-occupation-english.pdf [hereinafter UN Apartheid Report].

[4] BADIL, *Report to Universal Periodic Review*, 2013.

and registration of children, as well as a military order on Absentee Property.[5] These discriminatory laws and military orders have provided for further legalized discrimination which dictate nearly every aspect of Palestinian life on both sides of the Green Line and in exile.

8. Palestinians were stripped of any legal rights to their land by the 1950 Absentee Property Law, which transferred legal ownership of refugee and IDP lands to Israel, and did so in such a way as to prohibit any claims for restitution of the land.[6] Israel also passed laws that established a system that proliferates Jewish settlement and prohibited Palestinian development. There are laws that give legal force to the Jewish National Fund's mandate to act exclusively for the benefit of Jews,[7] that constitutionally demand Israeli lands be held in perpetuity for Jews,[8] and require that all State land, managed by the Israeli Land Authority and amounting to 93% of land within the 1948 borders, is closed to use, development or ownership by non-Jews.[9]

9. In addition to the annexation of Jerusalem,[10] large swathes of the West Bank have been declared "State lands", closed to Palestinian use and administered by an Israeli institution that is legally bound to administer that land for the exclusive benefit of Jews.[11]

10. The need for the ongoing forced displacement and transfer of the indigenous Palestinian population (including the ethnic cleansing that occurred in 1948)[12] and the denial of their return in order to ensure the Jewish character of the Israeli State, is deeply embedded within Israeli jurisprudence, practice and ideology. The Law of Return and 1952 Citizenship (Nationality) Law are composed in such a way as to guarantee all Jews the right to "return" and immediately enjoy full civil and political rights in Mandatory Palestine (all territory under the effective control of Israel)[13] on the basis of their identity. The Citizenship Law excludes Palestinian refugees from citizenship in Israel: they were "denationalized" and turned into stateless refugees in violation of the law of state succession.[14]

11. Additionally, since 1948, Palestinians have been prevented from returning at all through the enactment of the Prevention of Infiltration Military Order, which became law in 1954, with heavy criminal sanctions.[15] As such, Palestinian refugees and IDPs, and their descendants, have been denied their right of return, while hundreds of thousands of Jews have entered and benefit from the privileges afforded them by Israeli institutionalized discrimination.

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[5] For more information see BADIL's working papers, Forcible Transfer: the Case of Palestine on Denial of Residency, available at http://badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp16-Residency.pdf; Discriminatory Zoning and Planning, available at http://badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp17-zonnig-plannig-en.pdf; Land Confiscation and Denial of Use, available at http://badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp21-LC.pdf.

[6] BADIL, *Israel's Discriminatory Laws: Summary Version*, September 2012, p.16, available at http://www.badil.org/phocadownload/Badil_docs/bulletins-and-briefs/bulletinno.26.pdf.

[7] Jewish National Fund Law, 5713-1953, (Isr.).

[8] *Basic Law: Israel Lands, 5720-1960, (Isr.).*

[9] See UN Apartheid Report, *supra* note 3, 2, and the Virginia Tilley (ed), *Occupation, Colonialism, Apartheid? A re-assessment of Israel's practices in the occupied Palestinian territories under international law*, Human Sciences Research Council of South Africa, 29 May 2009, p.159, available at http://www.hsrc.ac.za/en/research-data/view/4634.

[10] See Al-Haq joint written statement, Legalising the Illegal: The Status of Jerusalem and Unlawful Forcible Transfer*, 13 February 2018, A/HRC/37/NGO/115

[11] UN Apartheid Report, *supra* note 3, 34.

[12] BADIL, "Survey of Palestinian Refugees and Internally Displaced Persons (VIII) 2013-2015", November 2015. Available at: https://www.badil.org/phocadownloadpap/badil-new/publications/survay/Survey2013-2015-en.pdf.

[13] UN Apartheid Report, *supra* note 3, 37-38.

[14] International Law Commission, *Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries)*, 3 April 1999, A/54/10, art.1, available at: http://www.refworld.org/docid/4512b6dd4.html.

[15] Law for the Prevention of Infiltration (Offences and Judging), 5714-1954, SH No. 16, 160, (as amended)(Isr.).

12. Israeli acts, policies and/or practices, committed separately or in combination, are committed as part of "an institutionalized regime of systematic oppression and domination by one racial group" over another and are committed with the intention of maintaining racial domination and oppression over the Palestinian people.[16] In other words, this institutional and systematic discrimination, that is based solely on ethno-religious identity - thereby violating the jus cogens prohibition on racial discrimination,[17] is of such a pervasive nature that it constitutes the crime of apartheid.[18]
13. The current state of affairs, including the enactment of the Nation-State Law, is a manifestation of the ongoing failure of international community to hold Israel accountable and to provide Palestinians with the protection to which they are entitled.

14. On this basis, BADIL calls on the UN Secretary General and UNGA to:
    a. Reassess the decision to withdraw the ESCWA report, "Israeli Practices toward the Palestinian People and the Question of Apartheid, Palestine and the Israeli Occupation, Issue No.1" and seriously consider its adoption;
    b. Urge Member States to fulfil their obligations to hold Israel accountable by cooperating to bring to an end to Israel's system of institutionalized discrimination, refraining from any act which directly or indirectly aids or assists the unlawful situation, and refraining from any action which expressly or tacitly recognizes such a system as lawful, including the imposition of sanctions.[19]

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[16] See UN General Assembly, *Rome Statute of the International Criminal Court*, 2187 UNTS 90, 17 July 1998, available at: http://www.refworld.org/docid/3ae6b3a84.html, Article 7(2)(h), the elements of which are further articulated in the International Criminal Court (ICC), *Elements of Crimes*, ICC-ASP/1/3(Part II-B), 9 September 2002, available at: http://www.refworld.org/docid/4ff5dd7d2.html.

[17] UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 660 UNTS 195, 21 December 1965, available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx

[18] UN Apartheid Report, *supra* note 3.

[19] Article 41 of the *ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, available at http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.